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IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES A. NAVE, Appellant	)	No. 767
v	)	October Term,
CITY OF SEATTLE, Appellee	)	1966.

On Appeal from the Supreme Court of
The State of Washington - No. 38144

BRIEF OPPOSING MOTION TO DISMISS
OR AFFIRM

FOREWARD

Appellee's paper, Motion to Dismiss or Affirm, by-passes showings by my Jurisdictional Statement wherein I raised Federal Questions in the State Courts. It ignores that actions by the State Courts were without Constitutional authority and, were moves by measures invalid by the fact that they were not enactments by the rules of the Constitution to the making of valid laws. It is these points that are the basis of my appeal. In no part of Appellee's paper have they been covered.

CORRECTING ERROR IN APPELLEE'S "STATEMENT"

In the third paragraph, page 2, of Appellee's paper in this statement:

> "The latest date which his complaint alleged he received any injury was March 5, 1962."

By my Claim referred to supported Complaint, I allege injury through September 13, 1963. It shows injury by Appellee's omission to perform duty due as well as elements of "Corrupt Prosecution". The preceeding and additional features are clearly and fully set out in my Jurisdictional Statement and supported in Transcripts set up on Appeal.

COUNTER ARGUMENT

Appellee's paper, page 6, projects the thought that I maintained my right to trial by jury in the State Courts under the 7th Amendment of the United States Constitution. Pages 12, 13, 15, 16, 17, 19, 20, 27, XII, XIII, XVII, XXI, XXVII, XXVIII & XXX of my Jurisdictional Statement all show this remark of Appellee's to be untrue.

My show of "issues of fact" point to the false in the contention made by Appellee downward on the same page.

On page 7, Appellee attempts to set the 14th Amendment's guarantee of Article I, Section 21 of the State Constitution as

> "novel contention",

but winds up the page starting a quote of this Court from Fay v New York, 332 U. S. 261, 67 S.Ct.

1613, which confutes Appellee's own contention, "that same is not tenable."

To test those two positions, I will set out the Laws and show their relation to Appellee's quote of this Court.

Article I, Section 21 - Trial by Jury - reads:

> "The right of trial by jury shall remain inviolate, but the legislature may provide . . . . for waiving of the jury in civil cases where the consent of the parties interested is given thereto."

R. C. W. 4. 44. 010 - Trial Defined:

> "A trial is the judicial examination of the issues between the parties, whether they are of law or of fact."

By the above laws of the State, it is seen that "Trial" rests with jury when not waived and is composed of both "issues of law and of fact".

This "undiluted state of trial to the jury" is further shown by the State Constitution in its Article IV - The Judiciary - in Section 16 - Charging Juries, where definiteness is put upon duties of the judge in a jury trial:

> "Judges . . . . shall declare the law."

The above laws are guaranteed to each person in The jurisdiction of the State by the Fourteenth Amendment to the United States Constitution in its Section 1:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any

person of life liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Appellee's quote of this Court, pages 7 & 8:

"The function of this federal court under the Fourteenth Amendment in reference to State juries is not to prescribe procedure but is essentially to protect the integrity of the trial process by whatever method the State sees fit to employ."

The above quote of this Court wholly supports my position in these words:

"The function of this federal court under the Fourteenth Amendment in reference to State juries is . . . . essentially to protect the integrity of trial process by whatever method the State sees fit to employ."

The State is "Instrument of its Constitution".

By its Constitution, the State of Washington's

"method of trial process which it sees fit to employ"

is that of

"Trial (issues of law and of fact) by the jury unless waived by the parties".

This "method of trial process which the State sees fit to employ" is mandatory upon the State Courts by Article I, Section 29 of the State constitution, which reads:

"The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise."

By the foregoing set out ruling of this Court on its power under the Fourteenth Amendment toward State juries, and the foregoing set out State Laws regarding "Trial by Jury", the fallacy is readily seen in Appellee's contention, for, This Court's ruling set out, shows it is duty-bound

> "essentially to protect the integrity of trial process"

as "mandated" by the State Constitution.

This Court further supports the valid laws of the State Constitution in its decision in Miranda v State of Arizona, June 13, 1966, 86 S. Ct. 1602, (U. S. Court Reporter, Vol. 86, No. 17, End of 1965 Term) at Syllabus 38, pages 1608 & 1636, where this Court says:

> "Where rights secured by Constitution are involved, there can be no rule making or legislation which would abrogate them."

The State Constitution does not provide any leeway for the State Courts to employ any method of trial differing from its provisons (which is of trial "undiluted" by jury unless waived by the parties); therefore, by this Court's own rulings, no leeway exists for the State Courts having the authority to

> Abrogate my inviolate right to trial by jury in all issues of trial.

Essentially, This Court said:

> The State Courts and the legislature are legally bound to protect my inviolate right to trial by jury in all issues of trial. They cannot make rules or enactments which abrogate that Constitutional right.

With each of the foregoing set out enactments being valid laws, the non-conforming actions by the State Courts had to be by measures that were invalid. These factors set clear-cut lines for this Court to declare null and void all of the measures not conforming to the requirements of the Constitution.

Appellee advances the theory (page 5) that no federal questions were raised.

The foregoing is Federal Question. Also,

A Federal Question is raised when decision of State of Oklahoma (Motion page 5) or any other State is set out as rule of law for the State of Washington. This is adequately shown in a complete manner in my Jurisdictional Statement.

Even a decision of the State Court must be made under Authority of the Constitution. This fact is because the court cannot legally act as the legislative branch of government. When its rulings are not substantiated by valid law - as in this instance - then it is subject to review in the light of it being that of an invalid measure. The court cannot legally perform at "kangaroo" level and be law unto itself.

As shown in my Jurisdictional Statement,

"right to Trial by Jury"

was deprived me by the State Courts in their application of invalid statutes and use of "produce of the courts" which would be classified as that of the so-called judicial legislation - also a material of invalid nature.

Adequacy of Federal Question for plenary consideration by this Court is well shown by me in my Jurisdictional Statement.

The fallacies of Appellee's contentions on page 5 are fully shown under the heading THE QUESTIONS ARE SUBSTANTIAL in my Jurisdictional Statement (pages 18 thru 28), where I show the incomplete meaning the courts below have put upon the terms "Malicious Prosecution","Misuse of Office" and "Abuse of Process", and their failure to consider other terms more appropriate than "Malicious" as a designation to "Falseness in Prosecution". Setting these terms, in their incomplete manner, as Law of the State of Washington does not carry the "Authority by Constitution", and, would be in the field of "so-called judicial legislation" and be invalid by their insufficiency of meaning as well as lack of authority. As "judicial legislation" they are "repugnant" to the Constitution. As invalid measures, they are specious to the extent of use to deprive of Constitutional Rights; in the other ways, they can only be from the lack of not having made full analysis of meaning which the terms actually convey. But in either case, they are invalid and were used by the courts below to deprive me my inviolate rights.

One does not have to reason much to see that the making of a court decision in Oklahoma would not be the writing of a law in the State of Washington. There is no authority for a judge of any State to write the laws of Washington State. This applies even to the judges of this State. Then too, besides need of authority, to be law there must be writings that are specific so there is no ambiguity in meaning.

The Constitution is an instrument by reason, and its provisions are for the purpose of providing justice and the maintaining and the protection of rights of individuals. As quoted on a television program:

"Justice is man's greatest interest on earth."

and,

"Somebody's justice is everybody's business."

The Constitution is based upon impartiality to individuals. By reason then, one can see that justice can only be had by adhering to measures of impartiality set in the Constitution.

The infectious use of invalid statutes and of the so-called judicial legislation must be stamped out if there is to be respect for forces making up the instrument of government. Every act of the legislature and of the courts should show the stamp of Constitutional Authority.

When courts below move out of the "kangaroo" level of "law unto itself", then respect for law will grow at a rapid pace because then there will be justice.

Appellee's Conclusion (page 8), would strike my Jurisdictional Statement; saying it is

"replete with burdensome, irrelevant, immaterial, and scandalous matter which is of particularly repugnant character. . . vilifying . . . . unsupported and erroneous allegations".

If my allegations were as Appellee says,

"erroneous and unsupported",

Appellee would prevail in a "TRIAL BY JURY".

If Appellee's accusations are true, Appellee need not fear a "trial by Jury" and should welcome the opportunity to exercise the right of "trial by a jury".

Fallacy of Appellee's accusations stand out in a clear manner by the appearance before this Court as a means to prevent there being a "trial by a jury composed of impartial citizens".

The reason Appellee wants to prevent a trial by jury, is because personnel of Appellee who were involved in Appellee's "Corrupt Prosecution" of me, did, under color of law, officially in the name and declared purpose of Appellee, commit criminal acts and omissions against me. And Appellee knows that these things are clearly shown by public recordings, in the sequence of their happenings, and would be presented as evidence to a jury.

In presenting material before this Court, it is proper for me to present defects from below in an undiluted form. Each portion of material contained in my Jurisdictional Statement is true and I considered each part necessary if there was to be a clear understanding of the conditions which I had to face in the courts below.

The objections set out by Appellee are only for the purpose of furthering denial to me of my Constitutional Rights and contain no portion of the purpose in the realm of "Justice".

WITH MY "CONSTITUTIONAL RIGHTS INVOLVED, THERE CAN BE NO RULE MAKING OR LEGISLATION WHICH WOULD ABROGATE THEM.

CONCLUSION

In the formulating days to Statehood for Washington, it was no secret about the high rate of partiality existing with some persons in judicial office, and those who were framers of the State Constitution, as means to preserving impartiality for the obtaining of justice, included in that Statehood Instrument the provision,

> "The right of trial by jury shall remain inviolate"

and also provided the means for waiving of that right by the parties interested. They set duties of the judge in jury trial as

> "Judges . . . . shall declare the law.".

Flaws in the Common Law were seen and it was not used. None of the issues of trial were in any way excluded from determination by jury other than by waiver of the parties - it was recognized that infection of partiality was spread under the control set in "issues of law", and the "Office of Jury" was so constructed as to give prevention against autonomy in the State Court System - that condition being of "kangaroo" level.

This court will recognize that features that lead to the "kangaroo" level, are those bred in the flaunting of Constitutional Law and, continuance at that level is by the voice of court being law unto itself by so-called judicial legislation.

Workings of the State Court System at the "kangaroo" level is clearly evident in the wordings of the judgments that led to my Appeals. It will be noted that not one place is there support of the

position, taken by the State Courts, by Authority of the Constitution or any valid law of the State.

Substitutions for mandated State Laws amounts to maladministration in that it is a circumvention of incessant duty. It was necessary for me to make known these conditions as they showed up in the handling of my case. And such would not be of "irrelevant, immaterial, scandalous or burdensome matter"; nor "vilifying". "Repugnance" would be that illegality of conditions as exercised under those invalid measures used by the State Courts to the exclusion of valid laws by the Constitution.

Already quoted are rulings by this Court which say that this Court's duty is

> "Essentially to protect the integrity of trial process of the State as is mandated by the State Constitution."

Authority for plenary consideration of Federal Questions presented, is given this Court by the Fourteenth Amendment to the Constitution.

Respectfully submitted

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

NAVE *v.* CITY OF SEATTLE.

APPEAL FROM THE SUPREME COURT OF WASHINGTON.

No. 767. Decided January 9, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.